IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 631 OF 1998

1. Vallabhdas Amarsey Kotak
2. Ramniklal Amarsey Kotak since
   deceased through heir and L.R.
3. Bhaidas Amarsey Kotak
4. Kanji Durlabhji & Co. ..Appellants

(Plaintiff No. 4 is Transposed
as Respondent No.3
as per Court's order dt. 5.4.99)

versus

1. State of Maharashtra
2. Municipal Corporation of
   Gr. Bombay
3. Kanji Durlabhji & Co. ..Respondents

Mr. N. Mhatre i/b. A. K. Abhyankar for the Appellants.

Mr. N. W. Walawalkar for the Respondent Nos.2.

CORAM : D. G. DESHPANDE,J.

DATE : 4TH FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the appellants and counsel for the Respondent No.2 - Municipal Corporation of

Greater Bombay.

2. Appellant is the original plaintiff. He had filed a suit before the City Civil Court vide Suit No. 3993 of 1986 for a declaration that the threatened action on the part of the defendants for dispossessing the plaintiff from land bearing City Survey No.53, Hissa No.2 i.e. CTS No.159/1 to 159/6 admeasuring 121 sq. yards was without due process of law. Relief of injunction was also sought against the Corporation.

3. It was the case of the plaintiffs that the suit plot originally belonged to and in the name of Smt. Mulibai Amarsi Kotak and the plaintiffs were the legal representatives and legal heirs of Mulibai Amarsi Kotak. They claimed ownership of the plot right from 1936 and had contended that Mulibai Kotak had acquired leasehold right in respect of adjoining land bearing Survey No.53, Hissa No.1 admeasuring 319 sq. yards from the Notified Area Committee, Borivali. This additional amount was secured to have surrounding area to enable her to erect a structure admeasuring 30’ x 35’ on the suit plot in accordance with the provisions and rules of the Town Planning Scheme. Sjubsequently the structure was assessed in 1936 and it was rented by the plaintiff to different tenants, including Plaintiff No.4 (who is transposed as respondent No.3 in this appeal vide

court’s order dated 5.4.1999). However, the Corporation demolished the structure and took possession on 27.11.1981 of the vacant land admeasuring 177.77 sq. yards and the plaintiff thereafter filed one Suit No. 3614 of 1986 in the Bombay City Civil Court against demolition and that was pending. The suit in question i.e. Suit No.3993 of 1986 was filed by the plaintiff on the apprehension that the State of Maharashtra-defendant No.1 and Bombay Municipal Corporation - Defendant No.2, were bent upon dispossessing the plaintiff without due process of law.

4. The suit of the plaintiff after framing of issues and evidence of the parties, came to be dismissed and therefore this Appeal.

5. The crucial question in this case now is whether the suit filed by the plaintiffs was maintainable. There is no dispute between the parties now because of the amendment of the written statement by the Bombay Municipal Corporation that Town Planning Scheme Borivli II (First Variation Final) was sanctioned by the Government and it came into force from 15.4.1996 and the suit plot i.e. Survey No.532 was part of Final Plot No.3 as per the town Planning Scheme.

6. Mr. Walawalkar pointed out that under Section 88 of The Maharashtra Regional and Town Planning Act, 1966 when a final scheme comes into force all lands required by the Planning Authority shall vest absolutely in the Planning Authority free from all encumbrances, and he therefore contended that since the Town Planning Scheme has been made applicable and the land is vested in the Corporation, no suit can lie now at the behest of the plaintiff. He also drew my attention to Section 149 of the MRTP Act which provides that every order passed or direction issued by the State Government or order passed or notice issued by any Regional Board, Planning Authority or Development Right under this Act shall be final and shall not be questioned in any suit or legal proceedings. Now relief claimed by the plaintiff in the suit of declaration of ownership is against the provisions of Section 149 because if that relief is granted it would amount to setting aside the order of acquisition which is not permissible.

7. Therefore, Mr. Walawalkar contended that the only remedy available to the plaintiff was to file a writ petition and not to file a suit. He therefore contended that dismissal of the suit by the trial court on amongst other grounds and also by upholding objection and as observed in paragraph 22

as under:

> "The provisions of Maharashtra Regional and Town Planning Act 1966 and the action taken under said provisions stand on the same footing and the same analysis. One has to hold that the jurisdiction of Civil Court for challenging the orders or decision of the Government or the planning authority .....is excluded by application of the said Act and the remedy of the plaintiffs to challenge the same in the High Court by way of writ petition."

In view of this finding and observation the suit was rightly dismissed by the trial court and no interference is called for. Hence, order:

ORDER

. The Appeal is dismissed on the aforesaid legal ground. The Plaintiffs may file a writ petition for the redressal of grievances. Statusquo to continue for a period of six weeks from today. The period will not be extended in future.

. Appeal disposed of with no order as to costs.

. Certified copy expedited.

4.2.2005 (D.G. DESHPANDE,J.)